

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES LEE MAKI,

Defendant-Appellant.

UNPUBLISHED

March 16, 2004

No. 245983

Iron Circuit Court

LC No. 00-008161-FH

Before: Zahra, P.J., and Saad and Schuette, JJ.

PER CURIAM.

Defendant appeals by leave granted his plea-based conviction of third-degree home invasion, MCL 750.110a(4)(a). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A person is guilty of third-degree home invasion if he or she “[b]reaks and enters a dwelling with intent to commit a misdemeanor in the dwelling, enters a dwelling without permission with intent to commit a misdemeanor in the dwelling, or breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a misdemeanor.” MCL 750.110a(4)(a). A person who willfully injures or destroys another’s personal property is guilty of a misdemeanor if the damage is less than \$200. MCL 750.377a(1)(d). The prosecution charged defendant with third-degree home invasion, alleging that he broke a window to gain entrance to a home, and that the act of breaking the window constituted the misdemeanor offense of malicious destruction of property having a value less than \$200.

Defendant sought dismissal of the charge, arguing that the breaking of the glass could not be used satisfy to both the breaking and entering and misdemeanor elements of third-degree home invasion. The trial court denied the motion. Defendant pleaded guilty of third-degree home invasion in exchange for dismissal of a habitual offender charge.

Both the United States and Michigan Constitutions prohibit placing a defendant twice in jeopardy for a single offense. US Const, Am V; Const 1963, art 1, § 15. These guarantees protect a defendant against both successive prosecutions for the same offense and multiple punishments for the same offense. *People v Herron*, 464 Mich 593, 599; 628 NW2d 528 (2001). In the case of multiple punishments, the defendant’s protected interest is “in not having more punishment imposed than that intended by the Legislature.” *People v Robideau*, 419 Mich 458,

485; 355 NW2d 592 (1984). The protection is a limit on courts and prosecutors, and not on the Legislature's power to define crimes and fix punishments. Whether separate punishments for multiple offenses violates the prohibition against double jeopardy depends upon whether the Legislature intended to authorize cumulative punishments. When ascertaining the Legislature's intent, relevant considerations include the elements of the offenses, whether the statutes violate distinct social norms, the punishments authorized, and whether the statutes are hierarchical or cumulative. *People v Walker*, 234 Mich App 299, 311-313; 593 NW2d 673 (1999). A double jeopardy issue presents a question of law that we review de novo. *Id.*, 302.

Defendant argues that the breaking of the window glass cannot satisfy both the breaking and entering and misdemeanor elements of third degree home invasion. He asserts that such a conviction would effectively violate the prohibition against multiple punishments for the same act. *Robideau, supra*.

We disagree and affirm defendant's conviction. The elements of the offenses of third-degree home invasion and malicious destruction of property are different. The offense of third-degree home invasion can be accomplished by entering a home without permission, and need not involve the destruction of property belonging to the homeowner. MCL 750.110a(4)(a). The statutes prohibit conduct violative of distinct social norms. The prohibition against third-degree home invasion, an offense that includes but is not limited to conduct prohibited as the former offense of breaking and entering a dwelling with intent to commit a felony or larceny, *People v Warren*, 228 Mich App 336, 348; 578 NW2d 692 (1998), aff'd in part and rev'd in part on other grounds 462 Mich 415; 615 NW2d 691 (2000), is intended to protect persons in their homes. The statutory sentencing guidelines define third-degree home invasion as a crime against a person. MCL 777.16f. The prohibition against malicious destruction of property is designed to hold offenders accountable for their actions, and is intended to protect property. *People v Hamblin*, 224 Mich App 87, 101; 568 NW2d 339 (1997). The statutory sentencing guidelines define malicious destruction of property as a crime against property. MCL 777.16s. Third-degree home invasion carries a maximum penalty of five years in prison. Malicious destruction of property having a value less than \$200 carries a maximum penalty of ninety-three days in jail. MCL 750.377a(1)(d). The statutes prohibiting third-degree home invasion and malicious destruction of property are located in different chapters of the Penal Code, and thus are not hierarchical or cumulative. *People v Rivera*, 216 Mich App 648, 651; 550 NW2d 593 (1996). Defendant has not established that the Legislature intended that the same act could not satisfy both the breaking and entering element and the misdemeanor element of third-degree home invasion.

Affirmed.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Bill Schuette